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No. 07-1525

Supreme Court, U.S.
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# In The
# Supreme Court of the United States

ROBERT M. DAVIDSON and
VANESSA E. KOMAR,

*Petitioners,*

v.

JAY GROSSMAN; EUDICE GROSSMAN; GAYLE F. PETRILLO; CHARLES OTT; JOANNE C. WRAY; KENT J. THIRY; JOSEPH C. MELLO; MICHAEL J. MEEHAN; BRUCE R. HEURLIN; ANTHONY P. TARTAGLIA; DVA RENAL HEALTHCARE INC; ALBANY MEDICAL COLLEGE; VIVRA HOLDINGS INC; GAMBRO HEALTHCARE INC; DAVITA INC; SEPRACOR INC,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## SUPPLEMENTAL BRIEF AND APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Pursuant to Supreme Court Rule 15.8, Petitioners pro se (Robert Davidson and Vanessa Komar, referred to collectively as the "Davidsons") submit for filing this Supplemental Brief in Support of Petition for Writ of Certiorari (07-1525, filed on June 4, 2008), calling attention to new cases not available at the time of the party's last filing, specifically the recent holdings of this Court in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. ___ (2008) (decided June 9, 2008), and the Eleventh Circuit in *Liquidation Commission v. Luis Alvarez Renta* (11th Cir. 2008) (decided June 19, 2008).

## ARGUMENT

This lawsuit is not stale. The "*separate accrual*" rule adopted by the Fifth Circuit should have been applied by the District Court (SDTX) to restart the limitations period, based on the Eleventh Circuit holdings in *Liquidation Commission* ("*RICO need not necessarily be the claim of last resort, but neither can a plaintiff seek to treble damages that he did not actually incur.*") Vanessa Komar and Robert Davidson are proper RICO plaintiffs, based on this Court's holdings in *Bridge* ("*A plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations.*") Davidsons' RICO claim is predicated on mail fraud (research, insurance, and employment fraud). The statute of

limitations should restart because Davidsons have show[n] "*new and accumulating injury [to] the plaintiff[s].*" Davidsons have alleged new overt acts within the limitations period.

*Congress did not intend for proper RICO plaintiffs to seek to treble damages that they did not actually incur.* 18 U.S.C. §1964(c). The Final Order (Appendix M) of the District Court, which was affirmed by the Fifth Circuit (Appendix A) under Fifth Circuit Rule 47.6 (Supp. App. 42), overlooks the cardinal principle that *a limitations period does not begin to run until the cause of action is complete.* This lawsuit was filed on February 2, 2007. Davidsons' injury was not *complete* on February 2, 2003 (the beginning of the 4-year limitations period). Standing is not a problem in this lawsuit because Davidsons have suffered '*real injury*' in Gregg County, TX and Pima County, AZ and because '*that injury can be redressed by damages.*' Davidsons have sufficiently alleged proximate cause under *Holmes v. Securities Investor Protection Corporation,* 503 U.S. 258 (1992), and *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), because they were "*immediately injured*" by Respondents' schemes (Supp. App. 1 thru 41). Davidsons' injuries are no longer speculative. All available legal remedies have been exhausted. Davidsons' RICO claims are "*ripe enough to be tried, under any standard.*" Davidsons (*both* Vanessa Komar and Robert Davidson) are proper RICO plaintiffs under *Bridge* and *Anza*. Davidsons properly preserved the issue ("*separate accrual*") at trial *and on appeal*. This

Court should review the accrual rule applied by the District Court (SDTX) and measure it against the purpose of Congress in establishing civil RICO under the de novo standard of review. Davidsons' lawsuit is distinguished from *Rotella v. Wood*, 528 U.S. 549, 553-54 (2000) by, inter alia, the fact that Davidsons dispute that constructive knowledge ("storm warnings") of injury in February 20, 2001, completed the elements of their cause of action. Hence, this Court needs to decide what limitations accrual rule might apply in such a case. The holdings of this Court in *Bridge*, and the Eleventh Circuit in *Liquidation Commission*, may be retroactively applied to vacate the *Final Order* (July 5, 2007) under the doctrine of *stare decisis*. This lawsuit is now imminently justiciable.

Davidsons have established a nexus between their injury and Grossman's RICO violations. Grossman violated 18 U.S.C. §1962(b) when he acquired an interest in the Vivra enterprise on or about April 22, 1997. Grossman *and others* violated 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d), when on May 11, 1999, he assaulted Davidson at the Vivra Tucson, AZ facility. The overt acts and omissions by Grossman *and others* which Davidson alleges to have taken place on May 11, 1999, in the Amended Complaint, represent multiple overt acts of racketeering. Grossman admitted to the acquisition of Vivra stock at Supp. App. 10, where on direct examination of Jay Grossman by Bruce Heurlin (appearing for the state):

Q: And is it correct that you were paid in Vivra stock.
A: Yes, I was.

In his concurrence in *State Farm Mut. Auto. Ins. Co. v. Ammann*, 828 F.2d 4, 5 (9th Cir. 1987), then-Judge Kennedy first applied the "*separate accrual rule*" in the RICO context: The rule is that a cause of action accrues when new overt acts occur within the limitations period, even if a conspiracy was formed and other acts were committed outside the limitations period. Davidsons alleged new overt acts within the limitations period. *Pace Industries, Inc. v. Three Phoenix Co.*, 813 F.2d 234 (9th Cir. 1987). Davidsons' injury has occurred and is known, and it is not speculative whether the damages might be reduced or even eliminated by alternative recovery efforts, because Davidsons' damages are actual damages and all available legal remedies have been exhausted.

*Extrinsic fraud in a Chapter 11 Bankruptcy proceeding (In Re: Magellan Health Services, Inc.) was alleged.* The first RICO action (filed on February 19, 2003, in Tucson, AZ) was stayed by the automatic stay on June 17, 2003. See page 6 of Document 56 under the heading *Statute of Limitations*. See pages 8 thru 22 of Document 47 filed in SDTX. See pages 1 thru 2 of Document 48-2 filed in SDTX. See pages 10 thru 13 of Document 79. See the exhibits at TAB A of Document 79. *The Affidavit of Michael P. McQuillen, signed on October 29, 2003*, found at pages 10 thru 14 of Document 47, was under oath, false, material to Davidsons' claims, material to obtaining Chapter 11 Discharge Confirmation and permanent injunction,

made with knowledge of its falsity, and ***represents new overt acts within the limitations period***.

*Grossman's use of "$2.9 million worth of stock" in Vivra (Supp. App. 10 thru 13, and 22) as a measure of alleged damages against Davidsons on November 23, 2004 (Tucson Damages Hearing),* ***represents new overt acts within the limitations period***. *The Declaration of Michael J. Meehan, Document 41 filed in SDTX on May 7, 2007), before a federal judge,* ***represents new overt acts within the limitations period***. Meehan's Declaration of Michael J. Meehan was under oath, false, material to jurisdictional facts, and made with knowledge of its falsity.

Davidsons' Amended Complaint and the full record in this case pass the proximate cause test described in *Anza*. The asserted causal chain is direct, not attenuated, and there are no other factors which could have led to Davidsons' injury. See Supp. App. 1 thru 41. The proceedings required to evaluate Davidsons' injury are *now* very straight-forward, given the actual damages sustained in Gregg County, TX and in Pima County, AZ. The proceedings would not entail an "*intricate, uncertain*" inquiry of the type that this Court warned against in *Anza*. There are no more immediate victims of the Defendants' alleged RICO violations who are likely to sue.

Under *Bridge* and *Liquidation Commission*, Vanessa Komar's standing under Count One is *identical* to that of her husband's (Robert Davidson's)

standing under Count One. No complex (metaphysical) apportionment of damages to avoid duplicative recoveries is necessary here. Plaintiffs' RICO claims survive dismissal under the "*separate accrual*" doctrine. In this lawsuit, the District Judge failed to follow the rule of separate accrual. The separate accrual doctrine was adopted by the Fifth Circuit in *Love v. National Medical Enterprises,* 230 F.3d 765 (5th Cir. 2000). "*New and independent*" *actual* damages within the limitations period are *readily apparent* on the face of the Amended Complaint.

The Amended Complaint and the full record in this case *clearly* indicates that Davidsons' cause of action was not complete at the time of their constructive knowledge of injury ("*storm warnings*") in February 20, 2001, by means of an FOI request. See App. 39 (of Petition). A new accrual rule should apply where a Plaintiff's injury does not complete their cause of action. Davidsons pray for this Court to grant certiorari and, inter alia, clarify when a civil RICO cause of action accrues. Congress intended this issue to be framed as one of *ripeness* from the actual language of the RICO statute. The District Court's faulty application of governing legal authorities to the facts in this case represents manifest legal error.

*Davidsons pray for a civil RICO accrual rule from this Court, where the limitations period is triggered by actual damages under "separate accrual" doctrine.* The term "*injury*" should be strictly linked to actual damages. The present ambiguous state of affairs with respect to civil RICO accrual gives a

distinctly different meaning to "*injury*" depending on whether the beholder of the word is a RICO plaintiff or defendant. This word should be given the meaning that Congress intended when the RICO statute was enacted.

Pursuant to Federal Rules of Evidence 201(b)(2) and (f), this Court may judicially-notice the certified transcript of the Hearing on Damages ("Tucson Damages Hearing") of November 23, 2004, before the Honorable Jane L. Eikleberry, Judge in Pima County Superior Court Case C-333954, provided in the Supplemental Appendix to this Brief. Rule 201(f) allows a court to take judicial notice at any stage of a proceeding, including on appeal. *Colonial Leasing v. Logistics Control Group Intern.*, 762 F.2d 454, 459 (5th Cir. 1985). Davidsons hereby request that this Court sua sponte take judicial notice of the Tucson Damages Hearing and supplies this Court the necessary information at Supp. App. 1 thru 33.

Prior to the Tucson Damages Hearing on November 23, 2004, the possibility of damages was "'*speculative [and] their amount and nature unprovable.*'" *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971). Davidsons' RICO claims were not ripe for suit prior to the Tucson Damages Hearing of November 23, 2004. The "loss" (actual damages) suffered on Defendants' RICO violations, could not be determined until November 23, 2004.

Davidson's Amended Complaint asserted a nexus between the RICO violations and injury. Proof of the

nexus is found in the Minute Entry Order of November 24, 2004 (at pages 17 thru 19 of Document 57-11 filed in SDTX), the Amended Judgment (Nunc Pro Tunc), file-stamped on January 4, 2005 (at circled exhibit #34 thru #36 of Document 98 filed in SDTX) in the Arizona State Action, and the Affidavit Pursuant to Uniform Enforcement of Foreign Judgments Act, signed by Daniel J. Artz on January 13, 2005 (at circled exhibit #37 thru #40 of Document 98 filed in SDTX).

Davidsons properly preserved the issue of "*separate accrual*" of new and independent injuries on appeal. See Point of Error Two captioned "The Statute of Limitations is Tolled for this Lawsuit" of Davidsons' Opening Brief to Fifth Circuit (07-20650). See pages 19-26 of Davidsons' Reply Brief under the heading *Standing*. Davidsons raised the issue of "*separate accrual*" at page 3 of Document 71 filed in SDTX, and provided evidence of "*new and independent*" injuries in Documents 57, 71, 79, 83, 95, and 98, filed in SDTX.

Davidsons provided the District Court (Houston) with evidence that Davidsons sustained actual damages in the forum state of Texas. This Court is referred to ¶s 14 and 87 of the Amended Complaint. The affidavit and exhibits at circled page #34 thru #40 of Document 98 filed in SDTX are material to this issue. Pursuant to Federal Rules of Evidence 201(b)(2) and (f), Davidsons hereby request that this Court take judicial notice of the Notice of Constable Sale of July 24, 2006, filed in TXND on September 29, 2006,

and filed *again* in TXSD on September 18, 2007; the Notice of Constable Sale of June 5, 2007, filed in TXSD on September 18, 2007; the Texas Articles of Association of Dominion Health Services, P.A. file-stamped by the Texas Secretary of State on September 13, 1999; and the Texas Articles of Organization of Health Patrons PLLC file-stamped by the Texas Secretary of State on November 17, 1999, and supplies this Court the necessary information at Supp. App. 34 thru 41.

Davidsons' constructive knowledge (*"storm warnings"*) of injury on February 20, 2001, by means of an FOI request, did not complete their RICO cause of action under the *"separate accrual"* rule. See App. 39. *Poling v. K. Hovnanian Enters.*, 99 F. Supp. 2d 502, 511 (D.N.J. 2000) (cause of action does not accrue until all elements of RICO claim exist). The *fact* of new and independent actual damages did not occur until *after* November 23, 2004 (the date of the Tucson Damages Hearing). Predicate conspiracy acts occurred within the limitations period on November 23, 2004, when Grossman used $2.9 million in Vivra stock as a measure of damages against the Davidsons at the Tucson Damages Hearing. These new predicate conspiracy acts are new and independent acts, not merely a reaffirmation of previous acts. These new predicate conspiracy acts on November 23, 2004, have inflicted new and accumulating injury on the Davidsons. *Pace Industries Inc. v. Three Phoenix Co.*, and *State Farm Mut. Auto. Ins. Co. v. Ammann.*

The Schematic diagram found at pages 8 thru 10 of Document 16-6 is identical to the Schematic diagram which was submitted as part of Davidsons' *First Amended Complaint* in Tucson, AZ on April 30, 2003, in Case 4:03-cv-110-TUC-FRZ (*Davidson v. Vivra Inc*). From this schematic diagram, it is clear that just as in *Bingham v. Zolt*, 66 F.3d 553, 562 (2d Cir. 1995), there were a *variety of schemes* which were related only in their ultimate goal which resulted in "*new injuries.*" The underlying predicate acts of each scheme, however, were related and continuous. The district court in *Bingham v. Zolt* ruled that [the estate's] previous knowledge of the underlying wrongful acts did not bar its action as to these RICO injuries under the "*separate accrual*" rule. *In contrast*, the district court (SDTX) erred in dismissing Davidsons' lawsuit, where Davidsons' previous knowledge of the underlying wrongful acts did *not* bar its action as to these RICO injuries under the "*separate accrual*" rule. Davidsons had no cause of action under 18 U.S.C. §1962(b) *before* the Tucson Damages Hearing (November 23, 2004), since up until that time the possibility of damages was speculative.

Davidsons' newly-incurred damages (Supp. App. 38 thru 41) are sufficiently independent from their original injuries to start a new civil RICO limitations period running. *Bankers Trust Co. v. Rhoades,* 859 F.2d 1096 (1988).

The Final Order which dismissed this lawsuit represents manifest legal error, where at App. 38 of Appendix N, it states, "It is clear from Plaintiffs'

Amended Complaint and from the full record in this case that ***the civil RICO claims accrued many years before February 2, 2003***, the beginning of the four-year limitations period applicable to the RICO claims." The District Court erroneously looked to the date of constructive knowledge of injury (February 20, 2001) to trigger the limitations period, whereas the date of "*new and independent*" *actual* damages within the limitations period is the proper consideration under *Liquidation Commission* and the "*separate accrual*" doctrine. Under *Liquidation Commission* and the "*separate accrual*" rule, Davidsons' civil RICO cause of action was not complete at the time of constructive knowledge ("*storm warnings*") of their injury.

Davidsons' RICO claims against the "*new defendants in this case*" (Kent Thiry, Joseph Mello, Michael Meehan, Bruce Heurlin, DVA, Davita, Sepracor, and Tartaglia) are timely-filed within the four-year statute of limitations, because Davidsons have incurred "*new and independent*" *actual* damages within the limitations period in Gregg County, TX and in Pima County, AZ. New predicate conspiracy acts within the limitations period have also been identified (Grossman's use of $2.9 million in Vivra stock as a measure of damages against Davidsons at the Tucson Damages Hearing of November 23, 2004). The RICO claims as to the "*new defendants in this case*" are *not stale*, because new predicate conspiracy acts within the limitations period have restarted the statute of limitations.

"*Vivra*" used stock ownership and stock options to control Grossman, to give Grossman an interest in the enterprise, and to provide Vivra with a "*vehicle*" to use Grossman's stock ownership as a measure of damages *against Davidsons* should Grossman ultimately prevail in his Arizona State action (defamation) against Vanessa E. Komar and Robert M. Davidson. Vanessa Komar was never employed by Vivra and never worked as a nurse for Vivra. Vanessa Komar was named [solely by virtue of her community property interest with Robert Davidson] as a defendant in Grossman's Arizona defamation action. There were no allegations that Vanessa Komar ever defamed or caused intentional emotional distress to Jay Grossman and Eudice Grossman.

Davidsons alleged more than just *reputational* injury flowing from the alleged insurance, research, and employment fraud in the Amended Complaint. *Khurana v. Innovative Health Care Systems, Inc.*, 130 F.3d 143 (5th Cir. 1997). Davidsons' actual damages in Pima County, AZ and Gregg County, TX were foreseeable, natural consequences of the defendants' insurance and research fraud, and the fraudulent hiring and retention of Davidson, and could certainly be anticipated as natural consequences of their alleged new predicate conspiracy acts within the limitations period.

Davidsons' injuries flow foreseeably and were natural consequence of Grossman's acquisition of $2.9 million in Vivra stock through a pattern of racketeering on or about April 22, 1997, Grossman's position

within the enterprise, the predicate conspiracy acts of May 11, 1999, at the Vivra Tucson facility, and the predicate conspiracy acts of November 23, 2004 (Tucson Damages Hearing), within the limitations period. The actual damage to Davidsons' business and property within the limitations period in Gregg County, TX and Pima County, AZ "*flowed*" from RICO predicate acts.

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

JAY GROSSMAN and
EUDICE GROSSMAN,

Plaintiffs,

vs. NO. C-333954

ROBERT MICHAEL DAVIDSON,
et al.,

Defendants.

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ROBERT MICHAEL DAVIDSON
AND VANESSA KOMAR,

Counterclaimants,

vs.

JAY GROSSMAN and
EUDICE GROSSMAN,

Counterdefendants

Tucson, Arizona
11/23/04

BEFORE: The Honorable Jane L. Eikleberry, Judge

Appearances:

Bruce Heurlin, Esq.,
Appearing for the State

Dr. Michael [sic] Davidson, Pro Per,
Vanessa Komar, Pro Per

HEARING ON DAMAGES

GAIL D. VINSON, CCR, RPR
Arizona #50610
Official Court Reporter
Pima County Superior Court
Tucson, Arizona 85701

[2] THE COURT: This is Case No. 20033954 [sic], Grossman versus Davidson. Would you state your appearances for the record, please?

MR. HEURLIN: Bruce Heurlin on behalf of the plaintiffs. With me are Dr. Jay Grossman, his spouse Eudice Grossman and Tom Pachelli, who works at my office.

THE COURT: Thank you. The Davidsons do not appear to be here, nor have they contacted my office to appear telephonically. Have you had any contact with the Davidsons?

MR. HEURLIN: No. And I would like to note it's 1:30 p.m. I have not had any contact with Dr. Davidson, although I did not expect him to be here. I am thinking back. I don't think I have ever had a telephone conversation with Dr. Davidson. Although I have called him. I don't think he has ever returned a telephone call, I don't know if the Court has received this, but this morning I received a document, a pleading from Dr. Davidson called a Notice of Petition for Special Action to the Arizona Supreme Court.

THE COURT: I have not seen this.

MR. HEURLIN: It came Fed Ex to me, and the service shows it went to the clerk of the Pima County Superior Court, so it was not sent to you. Would you [3] like to see this?

THE COURT: Sure.

It reflects that it was mailed to you and to the Clerk of the Pima County Superior Court on November 22.

Mr. Heurlin, what's your opinion as to whether that document, assuming it was filed, whether that interferes with this Court's jurisdiction or takes away our jurisdiction?

MR. HEURLIN: I am fairly sure it does not divest this court of jurisdiction. It is the petition that can be accepted or not accepted during the pendency of the Superior Court's jurisdiction. And I would note that it does not ask for a stay of this proceeding, and it's not even directed to the Court of Appeals, its directed directly to the Arizona Supreme Court.

As you, I am sure, are aware of, Dr. Davidson also has pending a request to stay this proceeding before Justice O'Connor in the U.S. Supreme Court, which to my memory has not been ruled on as of right now.

I conclude that this has no effect on the Court's ability to proceed today.

THE COURT: All right, fine. Let's proceed.

MR. HEURLIN: I would like – did you receive the statement of damages that I filed?

[4] THE COURT: It was faxed to my office right before lunch, and I have just had a chance to glance at it.

MR. HEURLIN: And I filed that this morning – or this afternoon at the clerk's office. So what I would like to do is proceed. And the statement of damages essentially outlines what I intend on doing today on this hearing.

Just to make a statement regarding this hearing, as the Court knows, the Court entered a default against Dr. Davidson and spouse as to answering and responding to the First Amended Complaint dismissing the counterclaim. And we are here today for a hearing pursuant to Rule 55-B-2 of the Arizona Rules of Civil Procedure to establish damages.

The context that we have is that because there's a default on the First Amended Complaint and considering the allegations of the First Amended complaint that are very specific, we don't have to concern ourselves with the allegations as to the wrongdoing committed by Dr. Davidson on behalf of this community or the proximate cause of those statements, because in the First Amended Complaint it specifically states and alleges that Dr. Davidson committed certain wrongdoings and those wrongdoings caused certain [5] results. And so all that is admitted.

So we are here only to ask to present evidence through the testimony of Dr. Grossman and some exhibits to the Court and ask the Court to find damages to be entered as a judgment against Dr. Davidson.

And with that, I would like to call Dr. Grossman as a witness.

JAY GROSSMAN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HEURLIN:

Q Would you please state your name?

A My name is Jay Grossman, G-R-O-S-S-M-A-N.

Q And, as we go along, would you, please speak up so that the court reporter and the judge can hear you well?

A I have a cold. I will do my best.

THE COURT: Is the microphone on?

THE WITNESS: It is now.

Q (By Mr. Heurlin) Dr. Grossman, would you briefly state what your educational background is?

A I graduated medical school in Syracuse, New York, in 1967. I did a medical residency in New York

City at Downstate Medical Center. I did a National Institute of [6] Health fellowship in allergy and immunology at the University of Rochester, finishing in 1972.

I then became a major in the U.S. Army Medical Corps in El Paso, Texas, directing the Asthma and Allergy Division at the Army Medical Center and the regional area

Q And at some point, did you practice medicine in Albany?

A I was in practice in Albany, New York, from 1974 to the end of 1992 when I moved to Tucson, Arizona.

Q And you were licensed in New York, correct?

A That's correct.

Q And you are currently licensed in Arizona?

A Correct.

Q Tell me about your involvement in the American College of Allergy?

A I have been a member of the American College of Allergy since the early to mid-1970s. I have been a director of their first course that they put on to train people in clinical research, and I did this for three years and was an electorate besides being the director of this course.

Q What is clinical research?

A Clinical research is a study using patients to look at the efficacy and potential side effects of drugs that [7] are coming to market or drugs that are already on the market looking for a new indication.

Q And are these research projects sponsored by a company?

A They are usually sponsored by a pharmaceutical company.

Q And in the United States, approximately how many physicians are involved in clinical research, in particular regarding allergy?

A There are probably 25 or 30 physicians who do clinical research in allergy and asthma on a regular basis.

Q And that's throughout the United States?

A Throughout the United States, correct.

Q Does the FDA, the Federal Drug Administration, monitor the clinical research?

A They monitor clinical research very closely. And every project that we get involved with gets submitted to the FDA for approval and review.

Q And when you use the term, "we," what do you mean by that?

A "We" meaning the company that I founded to do clinical research here in Tucson, as well as other clinical investigators around the country. So the FDA

is very closely monitoring the research studies. And [8] you need approval before starting the study, and then you get reviewed at the end.

Q Now, at some point, you previously stated that you moved from Albany, New York, to Tucson. Was that in connection of your becoming involved with a company called Vivra?

A No, I came here on my own and didn't get involved with Vivra until, I believe it was, 1997.

Q So you practiced in Tucson from 1992 until 1997, correct, private practice?

A 1993 to '97, correct.

Q And that was an allergy practice?

A Yes.

Q Did that involve clinical research?

A Yes, it did. Clinical research was a very important part of my practice. In fact, probably 80 to 90 percent of my practice was conducting clinical research during those years.

Q And, as far as being an important part of your practice, was it a profitable part of your practice?

A Most of my income came from directing the clinical research studies.

Q Did you have a reputation throughout the United States regarding clinical research?

Yes, I did. I was a consultant to several [9] pharmaceutical companies, lectured for several pharmaceutical companies in the United States and overseas.

Q At a point in time, did you essentially merge or sell your practice that you had in Tucson to Vivra?

A In 1997, Vivra – I can't remember their full name, but Vivra bought my practice from me and hired me as a consultant to conduct the clinical research.

Q I would like to have you look at what I would like to mark as Exhibit 1.

MR. HEURLIN: Your Honor, would you like to have a copy of this, as well?

THE COURT: That would be helpful. Thank you.

Q (By Mr. Heurlin) What is Exhibit 1?

A Exhibit 1 is a copy of my sale agreement to Vivra for my practice.

Q I would like to have you look at page 2, Paragraph 2.1. In this paragraph it states that Vivra is going to buy your practice essentially for $2,900,000; is that correct?

A That's correct.

Q How was that value established?

A Well, they knew the amount of business that we did and looked at the future business that they

planned on having us conduct. And I make assumptions that this was [10] done at fair market value for the approximately $2 million a year of clinical research we did in our office.

Q And is it correct that you were paid in Vivra stock?

A Yes, I was.

Q And, after entering into this agreement, did you practice in Tucson as Vivra?

A Yes, I did.

Q And where was your office?

A Our initial office was on Campbell Avenue, and then we moved to the corner of Wetmore and First Avenue.

Q Just jumping ahead a little bit, how long were you in practice as Vivra in Tucson?

A Approximately two years, from 1997 – I believe it was in April until May of 19989 [sic].

Q I am going to show you what is marked as Exhibit 2. What is Exhibit 2?

A It is a copy of my physician employment agreement with Vivra.

Q And I would like to have you look at page 2, Paragraph 2.1. Is it correct that your employment agreement was for ten years?

A Correct.

Q And I would like to have you look at page 13, [11] Paragraph 10.1. Did you understand you had a restrictive covenant, a noncompete provision that required you not to compete with Vivra for a period of two years after ending your employment with Vivra?

A Yes, I did.

Q And as to Exhibit 1 and Exhibit 2, you signed these –

A Yes.

Q – as part of your relationship with Vivra?

A Correct.

Q At a point in time, Dr. Davidson somehow got involved in the Vivra enterprise; is that correct?

A That's correct.

Q When was that, approximately?

A September of 1996 [sic].

Q And what was his role?

A He was to be my assistant to help me conduct the clinical research at our office.

Q Now, you are familiar with the First Amended Complaint; is that correct?

A Yes, I am.

Q Those allegations in there have been deemed admitted, so I am not going to go into those. But at some point were you terminated by Vivra?

A Yes, I was.

[12] Q And when was that?

A I think the official termination came in July of 1999.

Q After your termination from Vivra, at a point in time did you open your own practice?

A Yes, I did.

Q And do you still have that practice ongoing today?

A Yes, I do.

Q And after you opened your practice in Tucson, did Vivra sue you to close you down under the non-compete clause?

A Yes, they did.

Q And you defended that lawsuit and prevailed in the lawsuit?

A Yes, I did.

Q And do you recall Judge Harrington denying the motion for a temporary restraining order in Pima County Superior Court?

A Yes, I do.

Q Now, I would like to show you Exhibit 3. Handing you Exhibit 3.

At a point in time, did you enter into a settlement agreement and mutual release between you and various Vivra-related companies?

A Yes, I did.

[13] Q And is Exhibit 3 that settlement agreement?

A Yes, it is.

Q I would like to have you look at page 3 at the top, which is the ending portion of Paragraph 7 on the preceding page. Do you see that?

A Yes, I do.

Q The $2,900,000 of stock that you received when Vivra purchased your practice, Vivra then paid you a total of $480,000 for that stock, correct?

A Correct.

Q So the difference would be $2,900,000 less $480,000, correct?

A Correct.

Q Now, this document, Exhibit 3, is dated about four years ago in the year 2000. November 15, as I recall is when you signed it.

A Yes. November 15, 2000.

Q Did that then end all your relationship with Vivra? You stated you had been terminated by Vivra earlier. But, after your termination, you still owned the stock?

A Correct.

Q And with this settlement agreement, did that totally terminate your relationship with Vivra?

A Yes, it did.

Q And how far along in the period of ten years of [14] your contract did you go before November 15, 2000?

A We went on for three – about three years of the ten-year contract.

Q And could you just tell me briefly, besides associating – essentially selling your practice to Vivra for $2.9 million and doing clinical research for Vivra, what were the other plans that you had when you entered into the relationship with Vivra regarding your practice?

A I was to develop other research sites in the large cities in the Southwest, including Phoenix, Albuquerque, El Paso as the main centers for it.

Q And did that occur?

A No, it did not.

Q How many offices do you have in Tucson today?

A Three.

Q Do you do any clinical research?

A No, I do not.

Q Why not?

A I have essentially been blackballed from doing clinical research.

Q What do you mean by that?

A Because of being fired by Vivra during the conduct of clinical studies and an ongoing FDA investigation at that point, I was in a way tainted by the being fired by [15] Vivra, even though the findings of the FDA were fine, there was nothing extremely negative about the findings by the FDA. I could have continued to conduct research if I had not been fired by Vivra during this period of time.

Q Okay, let me ask you a couple of follow-up questions. First, have you ever been sanctioned by the FDA?

A No, I have not.

Q Is there any kind of legal restriction on you in doing clinical research?

A No, there is not.

Q You said you were "tainted." I am not sure if you said that word. But how did this affect your reputation?

A It basically destroyed it. Once you are accused of any kind of activity that the FDA gets involved with, particularly being fired by the company that you work for, it basically negates any future ability to do any clinical research.

Q When you were terminated by Vivra, at that point in time were there a number of ongoing clinical research projects that you were involved in?

A Several.

Q And what happened to those research projects after [16] you were terminated by Vivra?

A Some were cancelled by the pharmaceutical companies. I don't believe very many were continued. I think basically most of them were cancelled. At that point, some Vivra may have continued to do. I am not sure about that.

Q When you were doing clinical research, were you doing clinical research in with sponsors who were major pharmaceutical companies?

A These were the largest pharmaceutical companies in the U.S. and sometimes abroad that conduct studies in allergy and respiratory disease and asthma. These are companies I had worked with for many years.

Q Give me some names.

A Well, the one that's in the news now, America Pharmaceuticals, Glassco Pharmaceuticals, Sheering

Blow, Eventis Pharmaceuticals, Forrester Laboratories, UCD Pharmaceuticals, several companies.

Q And do you attribute your termination – let me break that up. Do you attribute Dr. Davidson's accusations to your termination?

A Completely.

Q And do you attribute your termination to your inability today to do clinical research?

A Correct.

[17] Q And do you attribute your termination to constitute a damage to your reputation that you had earned prior to your termination?

A My reputation that I had earned doing research for probably 10, 12 years before that.

Q I am going to show you Exhibit No. 4. Are you looking – are you familiar with Exhibit No. 4?

A Yes, I am.

Q Painfully so?

A These are the billings for my legal fees involved with my suit

Q Okay. These are the bills from my firm to you regarding what led after your termination to the dispute with Vivra?

A Correct.

Q And these go all the way through, starting with your termination until the time the Vivra case was settled, as we saw in Exhibit 3, correct?

A Correct.

Q And those are the fees that my firm billed you and you paid; is that right?

A Correct.

Q I would like to show you Exhibit 5. Are you familiar with Exhibit 5?

A Yes, I am.

[18] Q And what is Exhibit 5?

A This is the billing from your firm for my case against Robert and Vanessa Davidson.

Q And these bills involve both the Complaint by you and the defense of the counterclaim by Dr. Davidson, correct?

A Correct.

Q And you paid this bill?

A Yes, I did.

Q Now, I would like to show you Exhibit 6. Exhibit 6 is a document from the Social Security agency or department, correct?

A Correct.

Q And on the second page it shows your earnings during a number of years, at least your Social Security earnings, correct?

A Correct.

Q Now, I would like to show you a number of exhibits.

I would like to have you – first of all, the exhibits you have in front of you, are those all W-2, IRS statements issued to you that state your income for a period of years?

A Yes, it is – yes, they are.

Q And what I would like to do is go through these one at a time. And the exhibit stickers, I think, are on [19] the back. I would like you to refer to the earliest year by the exhibit number. If you turn those upside down, they will be in order.

So the first one, what exhibit number is that?

A 17.

Q What year is it?

A 2003.

Q Well, flip them over, and let's go the other way.

A Okay.

Q The first one on the back is –

A 7.

Q Okay. What year is that?

A That is 1994.

Q And what's your gross income for that year?

A $940,000.

Q And this is after you moved from New York to Tucson, correct?

A A year before that, correct.

Q You were in Tucson at this point?

A Yes, I am in Tucson. I am sorry, 8. I moved.

Q Exhibit 8, what year and how many?

A That was 1995. And this is only part of my earnings that year. This is for consultative work. And this was – I am sorry. This is not mine.

Q Exhibit 8 is your spouses?

[20] A Exhibit 8 is my spouse's.

Q Okay, we will just –

A Exhibit –

Q 9?

A – 9, my earnings, that's $1,210,000.

Q Is that for 1995?

A 1996.

Q What happened with 1995?

A I am looking to see if we have it out of order here, I don't have it. I have it listed with my papers, but, no, I don't have it here. I have just one for Eudice Grossman for that year, for 1995.

THE COURT: Counsel, we have these figures on the Social Security statement. Why do we need to go through the W-2s?

MR. HEURLIN: This just supports this. The figures, as you state, are on here. We don't have to do this. Those just support those figures.

THE COURT: All right. Thank you.

Q How about this, Doctor; why don't you look at the Social Security statement, and let me ask you this: Have you compared your W-2 statements, which are the exhibits, I think 7 through 17, to the numbers on the Social Security statement to verify the Social Security statement is accurate?

[21] A Yes, I have.

Q Have you? Okay, then we don't need to do that.

MR. HEURLIN: Your Honor, I think that completes the testimony of Dr. Grossman.

THE COURT: Thank you. You may step down.

MR. HEURLIN: In the statement of damages that I filed, that is corroborated by the exhibits – I would just like to offer all the exhibits into evidence.

THE COURT: We will accept Exhibits 1 through 6, and Exhibits 1 through 6 will be admitted. But 7 through 17, since we didn't go over them, they will not be admitted.

MR. HEURLIN: Okay, in my Statement of Damages, all these numbers are discussed that are in Exhibits 1 through 6. And taking them one at a time, the sale of the medical practice, the stock purchase, the settlement, as I stated before during the – or as Dr. Grossman testified, essentially he sold his practice for 2.9 million, and in the settlement got $480,000 in return for the $2.9 million worth of stock. He paid $73,921 in costs and attorney fees regarding that litigation.

So his total loss is 2,493,921. That has to do just with Dr. Grossman entering into the relationship with Vivra and being terminated and settling that [22] dispute.

The salary that he lost, as Dr. Grossman testified, he made substantial income while doing clinical research. And that averaged $904,194 through, the year 1998. And, as he testified, he was fired in 1999. He then started earning income – he was fired in '99. He had income essentially up to that point of $278,590 in 1999.

In 2000, he essentially did not work until he, as we discussed, he settled his dispute after Vivra lost their temporary restraining order to enforce the noncompete clause.

And then, in 2001, he started building up his practice. And I would add that Dr. Grossman entered into private practice in violation of the noncompete clause to mitigate his damages, which he has done. And he has built his practice up, as you heard before. His average earnings in the three years after he was fired, 169,061. You compare that number to the $904,000 before he was fired. And so his average earnings decreased by that difference between 904,000 and 169 which is –

THE COURT: He wasn't always making that $900,000 figure. In '97, he made 734 and in '98 he made 767?

MR. HEURLIN: Right.

[23] THE COURT: So how can we use –

MR. HEURLIN: Pardon?

THE COURT: How can we use the $940,000 figure as a benchmark?

MR. HEURLIN: Well, what I am suggesting here is to – I am trying to come up with a reasonable benchmark. And, in doing so, I am taking essentially three years before and three years after to find out what the average earnings are. And this is essentially something that obviously is something that you are going to have to decide on.

And this was a thriving practice before he entered into his relationship with Vivra and had great potential. And the balance here has to be a measure

of that value because, as Dr. Grossman said, he was three years into a deal with seven years left that got cancelled and had a lot of potential.

And I am not saying that this is the only way to calculate this. The only thing I could do is say – present all this to you and with the description as to what he was doing before he entered in this relationship with Vivra and what he has done since he has been allowed to practice after he terminated – he was terminated by Vivra, and the difference between before when he had the clinical research and now when he doesn't. And I think that's really a measure of the damages.

And these things are going to change all the time, you know, with inflation and interest and all sorts of things. And the practice and the value of new drugs, these things are going to fluctuate. And, basically, if anything, his income would increase over a period of years. In 1994, his income, as stated here, in 2004, had he been doing the same thing, he would have made multiples, I would say, of the 1994 dollars.

But the bottom line, to answer your question, this is my proposal. Its certainly not the only way to try to calculate this. And the only thing I could do is state one of innumerable ways to calculate damages and to explain how we have done that.

And, when we talk about this, as I say further on in my Statement of Damages, that we have mitigation here, because Dr. Grossman did, instead of having zero damages and complying with the noncompete clause,

he violated the noncompete clause and went to a hearing. He prevailed. And so he is practicing today – or at least he practiced for two years after being terminated to mitigate his damages. And so instead of having zero in 2000 and 2001 and part of 2002, he had those figures. So, as far as his damages and lost wages, lost salary, [25] we state those here.

And another important part is that his lost damages go on forever. For as long as he practices, he is not doing any clinical research. That has hit him by his reputation in the community of allergy clinical researchers and economically henceforth. And this is a case where once you are – he works hard to build up his reputation. And, once his reputation is damaged, it's irreparable.

And we state that in the part about the damage to the professional and personal reputation, that – and once again, this is not the only calculation we can make. But, as far as his reputation is concerned, and this is not an economic, lost income issue; this is an issue regarding his personal reputation, essentially the tort part of it as opposed to the loss-of-.income part.

And we have proposed the damages multiplied by three for the figure of 1,035,000.

THE COURT: How old is Dr. Grossman?

MR. HEURLIN: 61.

DR. GROSSMAN: 61.

THE COURT: How long does Dr. Grossman plan to practice?

DR. GROSSMAN: As long as I am healthy, your Honor. Hopefully until age 70 was my goal.

[26] MR. HEURLIN: Now, the next thing I want to discuss in my Statement of Damages is the abuse of process. And I will tell you, I have been practicing for 32 years, and I have never seen anything like this. Davidson sued Dr. Grossman in U.S. District Court, filed a 300-page complaint. We went around – that was dismissed. I moved to dismiss that. It was dismissed.

Davidson filed a TRO, and that was, dismissed. And then he filed an appeal in the Ninth Circuit. He went to the Supreme Court without a decision yet in the Ninth Circuit. He has this case, which has been going on for many years, and he filed an appeal that was untimely, this frivolous appeal. He went to the Court of Appeals. He wanted to bypass the Court of Appeals, go to the Arizona Supreme Court. The Arizona Supreme Court sent it back to the lower courts. He appealed it to the Arizona Supreme Court They denied review.

I got a judgment for costs and attorney fees, which is a combination that you entered that was a combination of cost and attorneys fees, and both the Arizona Court of Appeals and the Arizona Supreme Court. I recorded that as a judgment, threatened to execute on it and Dr. Davidson's home. He ended up paying the judgment, and then he sold his home.

He lives in Texas. As far as I know, he has [27] no assets in Arizona.

He filed an emergency stay with Justice O'Connor. I think he has a petition for certiorari pending, even though the Ninth Circuit hasn't ruled.

He filed this. As you know, you entered an Order, and then he files a three-inch document asking to you reconsider your Order. We have a petition for a special action pending.

Dr. Davidson has just flaunted and abused our system in both U.S. District Court and the Superior Court, and the Court of Appeals, and the Supreme Court of Arizona and the Supreme Court. And he should be expected to continue to do that.

And you have awarded sanctions in our attorneys fees in this case. The attorneys fees were not separated between what has to do with the Complaint and what has to do with the Counterclaim. There was one bill that had to do with everything. And what we propose to do is take 20 percent of the total bill as sanctions. And then as punitive damages, we propose – we request $5,500,000.

Now, two things I would like to say in conclusion to this. One is that this is a lot of money. But, as you could see, there was a lot of money at stake. Dr. Grossman, if he had never had anything to do [28] with Vivra, if he had never had anything to do with Dr. Davidson, likely would have made a lot more money and along the lines of a million dollars a year

as he was doing before he got into this relationship. In 1996 he made $1.2 million without Vivra, without Dr. Davidson.

And, if he had got into Vivra and had expanded throughout the Southwest, he may have made more money. Obviously, when he makes $1.2 million and then goes into Vivra, he is entering this contract with Vivra with the idea of making more money and having a more expansive practice, both in terms of patients and in clinical research. That's what his goal was in doing this, and that's what the agreement was.

Well, this has become a disaster. Not as bad as it could be. He has built up his practice in Tucson and has a nice income today. But his nice income today is half of – less than half of what he was making before in Tucson. And he has valued his reputation. That reputation has been damaged to the extent that he cannot do what he has a lot of expertise in and is known to do, and that is clinical research. And all of these companies aren't dealing with Dr. Grossman because of what happened here.

The second thing I would like to say, and the [29] final thing, is that I would like to get a judgment against Dr. Davidson for two reasons. One is that he severely injured Dr. Grossman economically. And, secondly, he severely injured him by his reputation. I doubt that Dr. Davidson is going to have the money to pay a judgment. I don't know what he has, what he doesn't have.

Not being a bankruptcy lawyer, I don't know whether all of this or some of it is nondischargeable. Without having any experience on it, I would merely speculate that maybe the sanctions and punitive damages are nondischargeable in bankruptcy.

So I would like to conclude that and ask you to enter a judgment, or enter a minute entry ordering me to prepare a form of judgment to submit to you fairly promptly and enter a final judgment in this case, Thank you.

THE COURT: Thank you.

I have got some questions. You have asked for sanctions of $11,660. Is that 20 percent of your attorneys fees in this case? That seems awfully low.

MR. HEURLIN: I think it is. It's in one of those bills that you have – I don't have my bills. One of those exhibits, Exhibit 5.

THE COURT: It says 54,982.

[30] MR. HEURLIN: And so probably 20 percent of that figure is this 11,660.

THE COURT: You are saying that $11,000 figure is the proposed sanction against defendants for filing the counterclaim? Because, if I award you all of the attorney fees that are in this bill, I have already awarded you the fees for defending the counterclaim, correct?

MR. HEURLIN: Correct.

THE COURT: So this is just an additional proposed sanction for filing the counterclaim?

MR. HEURLIN: Right.

THE COURT: How does that differ from an abuse of process damages?

MR. HEURLIN: Well, I am glad you ask that. The abuse of process damages, I think, is something that – first of all, the abuse of process is also intentional infliction of emotional harm, distress, which is an intentional tort versus a negligent tort and may not be dischargeable either. But that is to his reputation, and we don't have any documents other than what we have already presented to you that would prove how he has done that.

In other words, his abuse of process and intentional infliction of emotional distress, the [31] damages for that, I believe, are the same damages as the other damages. In other words, his abuse of process – not all the other damages. But his abuse of damages that really starts in this case – well, it has to be limited to this case. I don't think you could award abuse of damages in the federal case. So it has to do with this case, and when he started here, and all these appeals and stuff.

The abuse of process and the intentional infliction of emotional harm, I think goes to the other damages that we have stated there that – in other words, the stuff that I have already presented to you is Dr. Grossman's loss regarding his other counts, but

it's also the same proof as to his loss regarding the abuse of process, intentional infliction of emotional distress.

So what I am saying, essentially, is that I would like, if we could talk criminal law kind of terms, to have the damages run concurrently, that the damages for – based upon these other counts should be the same as on the abuse of process, intentional emotional distress count, but the counts run concurrently so the same damages apply to both counts.

THE COURT: How can Dr. Grossman's lost wages be attributed to the abuse of process and intentional [32] infliction of emotional distress? And particularly the abuse of process, because the lost wages had at least started and were set really by the time this lawsuit was filed.

MR. HEURLIN: Well, I would agree that they would not. I agree with what you said. However, I think that the intentional infliction of emotional distress part is something that does encompass all of that. What Davidson did in 1999 in his lies were intentional and they were intended to inflict emotional distress. And that – his action in 1999 is the proximate cause and has been deemed admitted as to all these damages. It certainly resulted in lost wages. It resulted in the Vivra thing collapsing, and it resulted in the damage to his reputation.

THE COURT: All right. Is it possible for you to prepare a form of judgment and get it to me by tomorrow –

MR. HEURLIN: Yes.

THE COURT: – with just blanks in it?

MR. HEURLIN: Yes.

THE COURT: "Blanks" meaning where you put the numbers in.

MR. HEURLIN: Right.

THE COURT: Those would be the only – and [33] there should be a signature blank; that would be good, too. And, if I decide that the evidence doesn't support an award of any specific kind of damages, I will just draw a line through that entry.

MR. HEURLIN: All right.

THE COURT: And, obviously, you need a spot for the claimed attorney's fees and costs. And the amount you are asking for in attorney's fees and costs I presume is the combined total of these two bills (indicating)?

MR. HEURLIN: Yes.

THE COURT: All right. Thank you. Is there anything further we need to cover today?

MR. HEURLIN: No. Thank you, your Honor.

THE COURT: If you will get that to me tomorrow, I will get it done.

* * *

[34] CERTIFICATE

I, Gail D. Vinson, do hereby certify that as a Certified Court Reporter for the Pima County Superior Court, I reported the foregoing proceedings to the best of my skill and ability, and that the same was transcribed by me via computer-aided transcription, and that the foregoing pages of typewritten matter are a true, correct and complete transcript of all the proceedings had, as set forth in the title page hereto.

/s/ Gail D. Vinson
GAIL D. VINSON, RPR, CSR
Arizona License No. 50610
Pima County Superior Court
Tucson, Arizona

4/4/05

(Filed
In the Office of the
Secretary of State of Texas
SEP 13, 1999 Corporations Section)

# TEXAS ARTICLES OF ASSOCIATION OF A PROFESSIONAL ASSOCIATION

The undersigned being of the age 18 of [sic] older, files these articles of association pursuant to article 1528f of the Texas Professional Association Act

1 The name of the corporation DOMINION HEALTH SERVICES, P A

2 The address of the association is 14721 Whitecap #395, Corpus Christi, TX 78418

3 The corporation is a professional association

4 The period of duration is 12/31/49

5 The purpose of this corporation is Internal medicine services

6 The association will not commence business until it has received for the issuance of its shares consideration of the value of a stated sum which shall be at least one thousand dollars ($1,000), consisting of money labor done, or property actually received

7 The street address of the registered office is 905 Congress Avenue, Austin, TX 78701
The name of the registered agent located at such addre [sic] Business Filings Incorporated

8 The name and address of the initial member is Robert Davidson 14721 Whitecap #395, Corpus Christi, Texas 78418

9 The initial member is licensed to perform internal medicine services

10 The name and address of the initial director is Robert Davidson, 14721 Whitecap #395, Corpus Christi, TX 78418

11 No member of the professional association shall have the power to dissolve the association by their independent act of any kind

August 25, 1999

/s/ Robert Davidson
Robert Davidson Member License # H2328

(Filed
In the Office of the
Secretary of State of Texas
NOV 17, 1999 Corporations Section)

# TEXAS ARTICLES OF ORGANIZATION OF A LIMITED LIABILITY COMPANY

The undersigned, being of the age 18 or older, files these articles of incorporation pursuant to article 11.01 of the Texas Limited Liability Company Act

1. The name of the limited liability company: HEALTH PATRONS PLLC

2. The period of duration: 12/31/2039

3. The professional service to be rendered by the professional limited liability company is: Provision of home health services (and ancillary services, e.g. infusion therapy, respiratory therapy, compounding pharmacy, durable medical equipment) to home-bound and/or institutionalized patients under the supervision of a licensed physician.

4. The name of the registered agent located as such address is: Business Filings, Inc., 905 Congress Ave., Austin, TX 78701 Located in the County of Travis

5. The limited liability company will have managers and the names and addresses of its initial mangers are:
Robert Davidson, M.D., P.O. Box 60014, Corpus Christi, Texas 78466-0014

6. The name and address of the organizer:
Richard A. Oster, 8025 Excelsior Dr., Suite 200,
Madison, WI 53717

/s/ Richard Oster
Richard A. Oster

(Filed in TXSD on 09/18/2007)

**NOTICE OF CONSTABLE SALE**
**(PERSONAL PROPERTY)**

BY VIRTUE OF A Order Granting Application for Turover [sic] of Mon-Exempt [sic] Personal Property in Aid of Execution issued out of the 188 District Court of Gregg County, State of Texas, in a certain cause numbered: 2005-93-A on a judgment rendered in said Court on the 10 day of May A.D. 2007, and directed and delivered to me, as Constable of Gregg County, Texas, I have on the 15 day of May, 2007 levied upon and will offer for sale on the 25 day of June A.D. 2007 between the hours 10:00 A.M. and 4:00 PM (at approximately 10:00 A.M..), at public auction to the highest bidder, for cash in hand, at Gregg County Court House at 101 East Methvin St. in Longview, Gregg County, Texas, all the right, title and interest, if any, of and to the following personal property, to wit:

1. Dominion Health Services, P.A., a Texas Professional Association

2. Health Patrons, PLLC, a Texas Professional Limited Liability Company

The above property is levied on as the property of Robert Michael Davidson and Vanessa Davidson and will be sold to satisfy a Judgment in the Superior Court of the State of Arizona Court of Pima County rendered on the 23 day of March A.D. 2005 in favor of Jay Grossman and Eudice Grossman and against the

said Robert Michael Davidson and Vanessa Davidson a.k.a. Vanessa E. Komar,

FOR THE PRINCIPAL, INTEREST AND ALL COSTS ACCRUING BY VIRTURE [sic] OF SAID SUIT THE TOTAL SUM OF $9,534,032.96 DOLLARS.

GIVEN UNDER MY HAND on this 5 day of June A.D. 2007.

Constable Bill Echart
Precinct 3
Gregg County, Texas

By /s/ Bill Echart

(Filed in TXSD on 04/21/2008)

**NOTICE OF CONSTABLE SALE**
**(PERSONAL PROPERTY)**

BY VIRTUE OF A Turnover Order issued out of the 188th District Court of Gregg County, State of Texas, in a certain cause numbered: 2005-93-A on a judgment rendered in said Court on the 16 day of June A.D. 2006, and directed and delivered to me, as Constable of Gregg County, Texas, I have on the 28 day of July, 2006 levied upon and will offer for sale on the 4 day of August A.D. 2006 between the hours 10:00 A.M. and 4:00 PM (at approximately 1:00 P.M..), at public auction to the highest bidder, for cash in hand, at 101 East Methvin Street in Longview, Gregg County, Texas, all the right, title and interest, if any, of and to the following personal property, to wit:

(a) Serenitas International, LLC

(b) Tranquiliy [sic] Ventures, LLC

(c) Sunshine Trading Company, Ltd.

The above property is levied on as the property of Robert Michael Davidson and Vanessa Komar Davidson and will be sold to satisfy a Writ of Execution in the 188th District Court of Gregg County rendered on the 22 day of March A.D. 2006 in favor of Jay Grossman and Eudice Grossman and against the said Robert Michael Davidson and Vanessa Komar Davidson,

FOR THE PRINCIPAL, INTEREST AND ALL COSTS ACCRUING BY VIRTURE [sic] OF SAID SUIT THE TOTAL SUM OF $9,018,951.40 DOLLARS.

GIVEN UNDER MY HAND on this 24 day of July A.D. 2006.

Constable Bill Echart

/s/ Bill Echart
Gregg County, Texas

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Fifth Circuit Rule 47.6 from Fifth Circuit Rules and Internal Operating Procedures (IOP) (As amended through August 2008), states,

> ***47.6 Affirmance Without Opinion.*** *The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision: (1) that a judgment of the district court is based on findings of fact that are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant; and (5) no reversible error of law appears. In such case, the court may, in its discretion, enter either of the following orders: "AFFIRMED. See 5th CIR. R. 47.6." or "ENFORCED. See 5th CIR. R. 47.6."*

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